REMARKS

The Applicants have studied the final Office Action dated August 9, 2007, and are submitting the following remarks. It is submitted that the application, in light of the following remarks, is in condition for allowance. Reconsideration and allowance of the pending claims in view of the above amendments and the following remarks is respectfully requested.

Telephone Interview

The Applicants wish to thank Examiner Neurauter for conducting a telephonic interview to discuss the contents of the newly cited reference and the finality of the pending office action. The discussion of this interview included the propriety of the finality of the current office action given the new ground of rejection based on a newly cited reference even though no amendments were made in the Applicants prior response. The interview also included discussion of the newly cited GetRight reference and its teachings as relate to the presently claimed invention.

Rejection under 35 U.S.C. §103(a) over Miller and "GetRight"

The Examiner rejected claims 1-2, 4, 6-7, 9, 11-12, 14 and 16-18 under 35 U.S.C. § 103(a) as being unpatentable over *Miller et al., U.S. Patent No. 6,014,707,* (hereinafter "Miller") in view of "GetRight Help Contents" (hereinafter "GetRight").

Independent Claims 1, 6 and 11

Using independent claim 1 as representative of the pending independent claims, the Applicants point out that claim 1 is directed to operations, such as the "accepting" and the "generating" limitations, that occur at "the requesting computer" as well as operations, such as the "receiving" and "transmitting" limitations that occur at the "server." The Applicants assert that the interaction of these two entities, the "requesting computer" and the "server," is not taught or suggested by the cited references taken either alone or in any combination.

GetRight only operates on the Requesting Computer

The Applicants assert that the GetRight reference describes a software product that is only resident on an analog to the claimed "requesting computer." The Applicants assert that the GetRight reference clearly describes a software product that operates only on the requesting computer and no mention is ever made of any interaction with the analog of "server" computers from which data is being downloaded. The GetRight reference never describes any type of software resident on the "server" computer (i.e., the computer transmitting the data) that would respond in any way to receiving any type of "speed indication signal." Although the GetRight reference describes limiting download speeds, the GetRight reference fails to describe in any way how this speed limiting operation is actually implemented. Since GetRight does not describe any operations in the server related to limiting transmission speeds, the GetRight reference cannot teach or suggest sending a message to the server, since there is nothing in the server to respond to such a message.

Therefore, the Applicants assert that no "speed indication signal" can be taught or suggested by the GetRight reference since no interaction, and therefore no communication from the requesting computer to the server of any type of control signals related to communications speed, is taught by the GetRight reference.

The Applicants further assert that the GetRight reference never teaches or suggests "generating, … in response to accepting the user input speed setting, a speed indication signal" as is set forth for the independent claims of the presently claimed invention. Even assuming, *arguendo*, that the GetRight reference could be combined with the Miller reference as suggested by the Examiner, the Applicants assert that the failing of GetRight to teach or suggest limiting an average rate of transmission of a particular specified data item clearly causes such a combination to fail to render the presently claimed invention obvious.

GetRight Speed limit controls the composite data rate for ALL Downloads

Further, although GetRight teaches a "speed limit," the Applicants point out that the

"speed limit" taught by the GetRight reference is a download speed limit that limits the data bandwidth used for all downloads being concurrently performed. The Examiner points to the description of the "obey speed limit*" configuration item for the GetRight program. The Applicants point out that the cited "obey speed limit*" description on page 8 of the GetRight reference is part of the "GetRight Download Status" section that starts on page 5 and is part of the "options menu*" description that starts at the bottom of page 7. The "options menu" description that begins on page 7 includes descriptions for a number of application wide configuration items, such as download window settings, actions to take when done (turn off computer, hang up, redial if disconnected), and set priority. Reading the descriptions of these items clearly reveals that they are application wide configuration items. For example, the "download windows as*" option specifies that "any current downloads will be changed to the display methods you pick." GetRight, page 7, last paragraph.

The "Obey Speed Limit*" description on page 8 notes "See Configuring-Limits" for information. GetRight, page 8, penultimate paragraph. The "Speed Limit XX YY per second" entry in the "Configuring-Limits" section (which is also cited by the Examiner) specifies "these items lit you set a speed limit for GetRight." *Id.*, emphasis added. This entry further describes allowing the user to provide an input to temporarily (or permanently) overriding the speed limit. GetRight, page 29, bullet starting with "When startup GetRight, do obey speed limit."

The Applicants assert that at least due to the above contents of the GetRight reference, the GetRight reference fails to teach or suggest "accepting, … in response to accepting the user request for the specified data item, a user input speed setting…" as is set forth for the independent claims of the presently claimed invention. Although a speed limit input is accepted by GetRight, it is not ever taught or suggested to be accepted "in response to accepting the user request for the specified data item." In fact, the GetRight reference never associates this speed limit with any particular data item, the speed limit is applied for all downloads, a plurality of which may occur simultaneously. See, for example, GetRight, page 7, 29-32 ("Downloading XX files at the same time").

Dependent Claims 22 and 23

With regards to claims 22 and 23, the Applicants reassert the above remarks concerning the lack of a teaching of a "speed indication signal" by the GetRight reference. Although the GetRight reference may teach setting a "speed limit" for the composite data rate for all concurrently executing downloads, no teaching or suggestion of sending such information to a "server" is ever described or suggested by GetRight. Further, as discussed above, GetRight never indicates that this speed limit is even associated with a particular data item, and certainly does not indicate that the speed limit is "accepted, … in response to accepting the user request for the specified data item" as is set forth by the independent claims from which these claims depend. GetRight does not teach or suggest a "speed indication signal" as is defined by the independent claims from which these claims depend, and cannot teach that such a "speed indication signal is a quantity specifying a maximum data transmission rate" as is set forth for these claims.

Rejections under 35 U.S.C. §103(a) as being Unpatentable over *Miller* in view of *Shapiro* or in view of *Mann*

The Examiner rejected claims 3, 8, 13 and 21 under 35 U.S.C. § 103(a) as being unpatentable over Miller in view of *Shapiro et al.*, *U.S. Patent No. 5,991,810,* (hereinafter "Shapiro") and rejected claim 19 under 35 U.S.C. § 103(a) as being unpatentable over Miller in view of *Mann et al.*, *U.S. Patent No. 5,167,035,* (hereinafter "Mann").

The Applicants note that dependent claims 3, 8, 13, 19 and 21 depend from amended independent claims 1, 6 and 11, respectively. As discussed above, amended independent claims 1, 6 and 11 distinguish over the cited references. Since dependent claims include all of the limitations of the independent claims from which they depend, Applicants further assert that, at least for the reasons discussed above, dependent claims 3, 8, 13, 19 and 21 also distinguish over the cited prior art as well. Therefore, Applicants respectfully assert that the Examiner's rejection of claims 3, 8, 13 and, 19

under 35 U.S.C. §103(a) should be withdrawn.

CONCLUSION

The foregoing is submitted as full and complete response to the Official Action mailed August 9, 2007, and it is submitted that Claims 1-4, 6-9, 11-14, 19, and 21-23 are in condition for allowance. Reconsideration is requested and allowance of Claims 1-4, 6-9, 11-14, 19, and 21-23 is earnestly solicited.

The Commissioner is hereby authorized to change any fees that may be required or credit any overpayment to Deposit Account 50-1556.

No amendment made was related to the statutory requirements of patentablity unless expressly stated herein. No amendment made was for the purpose of narrowing the scope of any claim, unless Applicants have argued herein that such amendment was made to distinguish over a particular reference or combination of references.

If for any reason the Examiner finds the application other than in condition for allowance, or the Examiner believes that there are any informalities which can be corrected by Examiner's amendment, a telephone call to the undersigned at (561) 989-9811 is respectfully solicited.

In view of the preceding discussion, it is submitted that the claims are in condition for allowance. Reconsideration, re-examination, and allowance of the claims are requested.

Respectfully submitted,

Date: October 9, 2007

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